

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

NORTHERN FOOD I/E, INC.,

Plaintiff,

v.

OCM GLOBE INC., OCM GROUP USA INC.,
OCM GROUP USA, NJ, INC., GANG WANG,
YAOTIAN LI, “JOHN DOES” 1-5,

Defendants.

Case No.: 1:21-cv-01813-MKB-SJB

DECLARATION OF QISHU LIN

I, Qishu Lin, having personal knowledge of the matters set forth below, declare under penalty of perjury under the laws of the United States that the following is true and correct:

1. I am a resident of the State of New York and I am over the age of 18.
2. I am the president of the plaintiff Northern Food I/E, Inc. (“Plaintiff” or “Northern Food”), a company organized under the laws of the State of New York, and I am fully competent to testify to the matters stated herein.
3. I make and submit this Declaration in support of Northern Food’s application for an order to show cause why a preliminary injunction should not issue, against defendants OCM Group USA, NJ, Inc., OCM Globe Inc., OCM Group USA Inc., Gang Wang, and Yaotian Li (Collectively as “Defendants”).
4. Northern Food in the food production, importation and wholesale business. It sells staple foods, pastries, snacks, noodles, condiments, frozen food across America. Over the years, Northern Food has developed considerable goodwill and reputations for its high quality products.

One category of Northern Food's featured products is the pastries, snacks, noodles, sugar, grain and millet products (the "Authentic Products") distributed under the trademark of Dao Xiang Cun.

5. Dao Xiang Cun is a federally registered trademark with a U.S. Trademark Registration No. 3,344,149 (the "Dao Xiang Cun Mark"). Northern Food is the owner of the Dao Xiang Cun Mark.

6. Northern Food's Dao Xiang Cun Mark is suggestive and therefore inherently distinctive and entitled to protection. The Dao Xiang Cun Mark consists of three stylized Chinese characters, transliterated to "Dao Xiang Cun," meaning "village of the fragrance of ripening rice" in English. Compl. at ¶ 1. The Dao Xiang Cun Mark is used in connection with "pastries, snacks, noodles, sugar, grain and millet products." Compl. at ¶ 18. The expression of the "village of the fragrance of ripening rice" is not used to describe any characteristics of the goods.

7. Northern Food enjoys significant annual sales of the products advertised, distributed and sold in connection with the Dao Xiang Cun Mark. Images of Northern Food's products bearing the Dao Xiang Cun Mark are attached hereto **Exhibit 1**.

8. Northern Food's Authentic Products are normally sold less than \$7 per item for the retail price.

9. The success of the Authentic Products is due in large part to Northern Food's marketing, promotion and distribution efforts. These efforts include, but are not limited to, the advertising and promotion of the Authentic Products through newspapers, the internet and radio.

10. Northern Food promotes and sells its Authentic Products throughout the U.S. through supermarkets, retailers and wholesalers.

11. On April 2, 2021, Northern Food filed a Complaint (Dkt. No. 1) in the district court against all the Defendants for importing and distributing the a variety of products within this

judicial district using an exact or closely similar mark (the “Accused Mark”) to the Dao Xiang Cun Mark. See a copy of the Complaint (“Compl.”) attached herein as **Exhibit 2**.



12. Images of Defendants’ infringing products bearing the Accused Mark are attached to Exhibit B and Exhibit D of the Compl. (the “Infringing Products”).

13. Without authorization of Northern Food, Defendants imported large quantities of the Infringing Products from China and distributed them to supermarkets or retailers in states on the West and East Coast of the U.S. A substantial amount of the Infringing Products was distributed by Defendants to retailers and wholesalers located in this district.

14. In February, 2021, Defendants specifically targeted the New York market by advertising in the front page of a New York newspaper in Chinese language, World Journal. Defendants promoted the Accused Mark and the Infringing Products to New York customers in the advertisement. See a copy of the advertisement with translation attached herein as **Exhibit 3**.

15. Northern Food advised Defendant OCM Group USA Inc. in a letter dated Feb. 9, 2021 that Defendants’ use of the Accused Mark infringed Northern Food’s rights and demanded that Defendants cease and desist using the Accused Mark. Defendants refused to cease using the Accused Mark and have continued to use the Accused Mark in violation of Northern Food’s trademark rights.

16. Defendants maintain and operate a website (<https://www.ocmfoods.com>) to promote and advertise its products. On the website, Defendants include the Accused Mark under the “Our Brand” section. A side-by-side comparison of Northern Food’s Dao Xiang Cun Mark to the Accused Mark appears below, and confirms the infringing and/or counterfeiting nature of the Accused Mark. See Exhibit C to the Compl.

Northern Food's Dao Xiang Cun Mark	Defendants' Accused Mark
	

17. Defendants are selling and promoting a variety of products under the Accused Mark, including but not limited to, cakes, bread, and mooncakes. See Exhibit D to the Compl. Those Infringing Products are sold through the same distribution channels (supermarkets and retailers) as Northern Food's Authentic Products. Some of the Infringing Products are directly competing with the Authentic Products. See the comparison below; also see Exhibit 1 to Lin Decl. and Exhibit D to the Compl.

Northern Food's Authentic Products	Defendants' Infringing Products
	

Northern Food's Authentic Products	Defendants' Infringing Products
	 <p data-bbox="824 506 1149 737"> M01103  6 935820 211036 Hawthorn Cake (Guokui) 210g x 48boxes/cs 稻香村山楂锅盔 </p>

18. We confirm that Defendants are not, nor have they even been, authorized distributors or licensees of Northern Food's Authentic Products. We never consented to Defendants' use of the Dao Xiang Cun Mark, nor have we consented to Defendants' use of any identical or confusingly or substantially similar marks.

19. We use high quality materials, ingredients and processes in producing the Authentic Products to meet or exceed U.S. requirements and standards.

20. Our inspection of the Infringing Products revealed, among other things, improper packaging, poor packaging construction, incorrect labeling, and incorrect coloring.

21. Defendants' intentional and deceitful misconduct has likely resulted in loss profits to Northern Food and has damages the inherent value of the Dao Xiang Cun Mark, impaired Northern Food's reputation for providing high-quality products and diluted Northern Food's brands and the good will associated therewith, thereby negatively affecting Northern Food's

relationships with its current customers (including both retail customers as well as end consumers) and its ability to attract new customers.

22. Defendants' infringing conducts have to be enjoined immediately, otherwise, Northern Food and the public will suffer irreparable harms. Retailers and customers have been asking Northern Food about the Defendants and the Infringing Products' affiliation and relationship with Northern Food.

Executed on May 25, 2021.



By: Qishu Lin
The President of Plaintiff Northern Food